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RECEIVED

JAN 4 9 THE FIRST NATIONAL BANK OF BOSTON  
100 Federal Street  
I. C. C. Boston, Massachusetts 02110  
FEE OPERATION BR. 9998 - K

RECORDATION NO. .... Filed 1425

Date JAN 04 1979

Fee \$ 100.00

ICC Washington, D. C.

January 3, 1979

Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423  
JAN 4 1979 - 10 00 AM  
INTERSTATE COMMERCE COMMISSION

RECORDATION NO. .... Filed 1425

Re: Recordation and Filing of Documents Pertaining to the Mortgage and the Management of Five Covered-Hopper Railroad Freight Cars Owned by William M. Spencer, III  
JAN 4 1979 - 10 00 AM  
INTERSTATE COMMERCE COMMISSION

Dear Sir:

In accordance with the provisions and procedures of Section 11303 of the Revised Interstate Commerce Act, 49 U.S.C. §11303, and Part 1116 of Title 49 of the Code of Federal Regulations, it is hereby respectfully requested that the documents enclosed with this letter of transmittal, and more fully described hereinbelow, pertaining to the mortgage and the management of five (5) covered-hopper railroad freight cars owned by William M. Spencer, III, be recorded and filed by the Interstate Commerce Commission (the "Commission") pursuant to Section 1116.5 of said Title 49 of the Code of Federal Regulations.

A. Description of the Documents and the Parties Thereto.

Enclosed herewith are the following original documents to be recorded by the Commission and two certified true copies of each of said original documents to be recorded and filed by the Commission:

(i) Promissory Note and Security Agreement, dated December 21, 1978, made by William M. Spencer, III, an individual residing at 3035 Cherokee Road, Mountain Brook, Alabama 35223 and accepted by The First National Bank of Boston, 100 Federal Street, Boston, Massachusetts 02110 (said Promissory Note and Security Agreement being hereinafter called the "Note"); and

(ii) Management Agreement, dated December 21, 1978, by and between States Marine Corporation, doing business through its division, States Rail Services, 280 Park Avenue, New York, New York 10017, and William M. Spencer, III, an individual residing at 3035 Cherokee Road, Mountain Brook, Alabama 35223 (said Management Agreement being hereinafter called the "Management Agreement").

Lilly  
Lonna  
C. Spencer

1. The Note.

The First National Bank of Boston (the "Bank") has agreed, upon the terms and subject to the conditions contained in the Note, to make a loan in the principal amount of One Hundred Thirty-Three Thousand One Hundred and Twenty-Five Dollars (\$133,125.00) (the "Loan") to William M. Spencer, III, (the "Investor"). The entire proceeds of the Loan will be applied by the Investor towards the payment of the purchase price of five (5) covered-hopper railroad freight cars purchased by the Investor from National Steel Car Corporation, Limited, a Canadian corporation located in Hamilton, Ontario, Canada (the "Manufacturer"). Further particulars of the five (5) covered-hopper railroad freight cars so purchased by the Investor from the Manufacturer (the said five (5) covered-hopper railroad freight cars being herein-after called the "Investor's Covered-Hopper Railroad Cars") are set forth below.

In order to secure the payment and performance by the Investor of all of his obligations to the Bank under the Note, the Investor has, pursuant to Section 7 of the Note, granted to the Bank a mortgage over and in respect of each of the Investor's Covered-Hopper Railroad Cars.

Each of the Investor's Covered-Hopper Railroad Cars is a 100-ton, 4,550 cubic feet capacity, steel covered-hopper railroad freight car, lined for use in the transport and shipping of grain products and select minerals, including salt. Each of the Investor's Covered-Hopper Railroad Cars was manufactured by, and was purchased by the Investor from, the Manufacturer.

The Identifying Marks, the Serial Numbers and the A.A.R. Mechanical Designation of the Investor's Covered-Hopper Railroad Cars are as follows:

<u>Number of Cars</u>	<u>Identifying Marks</u>	<u>Serial Numbers</u>	<u>A.A.R. Mech. Desig.</u>
5	GWIX	20025 to and including 20029	10

Reference is hereby also made to a Fiscal Agency Agreement, dated as of December 21, 1978, among (a) States Marine Corporation, acting in its individual capacity directly or by and through its division, States Rail Services, 280 Park Avenue, New York, New York 10017, (b) States Marine Corporation, acting as agent for the Investor by and through its division, States Rail Services, 280 Park Avenue, New York, New York 10017, (c) the Bank, and (d) the Investor (said Fiscal Agency Agreement being hereinafter called the "Fiscal Agency Agreement").

States Marine Corporation, acting in its individual capacity directly ("SMC"), has, upon the terms and subject to the conditions and limitations contained in the Fiscal Agency Agreement, guaranteed to the Bank the payment of the obligations of the Investor to the Bank under the Note. The maximum liability of SMC to the Bank under the SMC guarantee is limited to the sum of \$17,750.00.

## 2. The Management Agreement.

Pursuant to the terms of the Management Agreement, States Marine Corporation, doing business through its division, States Rail Services ("SMC/SRS"), has agreed to manage, on behalf of and as agent for the Investor, the five (5) Investor's Covered-Hopper Railroad Cars purchased by the Investor from the Manufacturer and mortgaged by the Investor to the Bank pursuant to Section 7 of the Note. In accordance with the terms of the Management Agreement, SMC/SRS took possession of each of the Investor's Covered-Hopper Railroad Cars at the Manufacturer's plant in Hamilton, Ontario, Canada, for the purpose of managing such railroad cars as agent for the Investor and as provided by the Management Agreement.

Although SMC/SRS has the right under the Management Agreement to manage each of the Investor's Covered-Hopper Railroad Cars, SMC/SRS does not have title to, and is not the owner of, any of the Investor's Covered-Hopper Railroad Cars.

Pursuant to a Lease, dated November 17, 1978, between SMC/SRS, as agent for (among other persons) the Investor, and W. H. Shurtleff Company ("Shurtleff"), Richardson Wharf, P.O. Box 1019, Portland, Maine 04104, SMC/SRS has, as agent for the Investor, leased to Shurtleff each of the Investor's Covered-Hopper Railroad Cars (said Lease being hereinafter called the "Shurtleff Lease Agreement").

The initial term of the Shurtleff Lease Agreement is for a period of six (6) months. Under paragraph 25 of the Shurtleff Lease Agreement, Shurtleff has the option to extend the term of the Shurtleff Lease Agreement for one additional period of four (4) years.

As provided by paragraph 23 of the Shurtleff Lease Agreement, the Shurtleff Lease Agreement and all of Shurtleff's rights and interests thereunder and in and to each of the Investor's Covered-Hopper Railroad Cars are and will at all times be subject and subordinate to all of the rights and interests in and to each of the Investor's Covered-Hopper Railroad Cars of the Bank as mortgagee of each of such railroad cars.

Shurtleff has the right, upon the terms and subject to the conditions contained in the Shurtleff Lease Agreement, to use each of the Investor's Covered-Hopper Railroad Cars in the ordinary course of Shurtleff's own business operations. However, Shurtleff does not and will not have title to, and

is not and will not be the owner of, any of the Investor's Covered-Hopper Railroad Cars.

B. Description of Other Documents Previously Submitted to the Commission for Recording.

Reference is also hereby made to the following two documents, an original of each of which has been recorded by the Commission and two certified true copies of each of which have been recorded and filed by the Commission under the recordation numbers, and on the date and at the hour set forth below:

<u>DOCUMENT</u>	<u>RECORDATION NUMBER</u>	<u>DATE</u>	<u>HOOR</u>
(i) Agreement, dated as of November 7, 1978, by and between the <u>Genesee and Wyoming Railroad Company</u> , 3846 Retsof Road, Retsof, New York 14539, and <u>States Marine Corporation</u> , doing business through its division, <u>States Rail Services</u> , 280 Park Avenue, New York, New York 10017 (said Agreement being hereinafter called the "GWRR Use Agreement"); and	#9946	12/27/78	1:35 p.m.
(ii) Subcontractor Agreement, dated as of November 7, 1978, by and between <u>States Marine Corporation</u> , doing business through its division, <u>States Rail Services</u> , 280 Park Avenue, New York, New York 10017, and <u>GW Rail Management Corp.</u> , 3846 Retsof Road, Retsof, New York 14539 (said Subcontractor Agreement being hereinafter called the "Subcontractor Agreement")	#9946A	12/27/78	1:35 p.m.

1. The GWRR Use Agreement.

Pursuant to the terms of the GWRR Use Agreement and the Management Agreement, SMC/SRS, acting in its capacity as agent for the Investor under the Management Agreement, may, at any time after the termination of the Shurtleff Lease Agreement with respect to any of the Investor's Covered-Hopper Railroad Cars, deliver to the Genesee and Wyoming Railroad Company ("GWRR"), for the latter's use in the ordinary course of its operations, each of the Investor's Covered-Hopper Railroad Cars in respect of which the Shurtleff Lease Agreement has terminated.

2. Subcontractor Agreement.

Pursuant to the terms of the Subcontractor Agreement, SMC/SRS has subcontracted to GW Rail Management Corp. ("GWIRM") certain operational and

managerial responsibilities which have been assumed by SMC/SRS under the Management Agreement and which may be assumed by SMC/SRS under the GWRR Use Agreement in respect of each of the Investor's Covered-Hopper Railroad Cars.

Reference is also hereby made to the letter of transmittal, dated December 21, 1978, from States Rail Services to the Commission, for a more complete description of the arrangements and transactions contemplated by the GWRR Use Agreement and the Subcontractor Agreement.

C. Rights and Interests in the Cars.

The rights and interests in and to the Investor's Covered-Hopper Railroad Cars of each of the parties named herein may be briefly summarized as follows:

<u>Party</u>	<u>Rights and Interests in the Cars</u>
William M. Spencer, III . . . . .	Owner and Mortgagor of the Cars
The First National Bank of Boston . . . . .	Mortgagee of the Cars
States Marine Corporation/States Rail Services. . . . .	Manager of the Cars
Genesee and Wyoming Railroad Company. . . . .	Future User or Bailee of the Cars
GW Rail Management Corp. . . . .	Manager of the Cars
W. H. Shurtleff Company . . . . .	Present Lessee of the Cars

D. Procedural Matters.

It is hereby respectfully requested that each of the following names be inserted in the Commission index established pursuant to Section 1116.5(c) of Title 49 of the Code of Federal Regulations:

- (1) The First National Bank of Boston;
- (2) William M. Spencer, III;
- (3) States Marine Corporation;
- (4) States Rail Services;
- (5) Genesee and Wyoming Railroad Company;
- (6) GW Rail Management Corp.; and
- (7) W. H. Shurtleff Company.

It is also hereby respectfully requested that the recordation number of each of the following documents be noted in the Commission index under the name of each of the parties shown above:

- (a) the Note;
- (b) the Management Agreement;
- (c) the GWRR Use Agreement (Recordation Number: 9946); and
- (d) the Subcontractor Agreement (Recordation Number: 9946A).

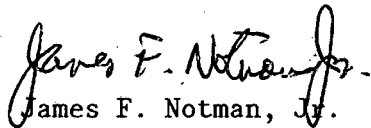
A check in the amount of One Hundred Dollars (\$100.00) has been enclosed with this letter of transmittal to cover the recordation fee prescribed by Section 1116.3(d) of Title 49 of the Code of Federal Regulations.

Kindly stamp the enclosed copy of this letter of transmittal and return such copy and the original documents enclosed herewith to Louis J. Duval, Esq., Bingham, Dana & Gould, 100 Federal Street, Boston, Massachusetts 02110.

If there are any questions with respect to the Note, the Management Agreement, the GWRR Use Agreement, the Subcontractor Agreement or the transactions described therein please feel free to telephone Louis J. Duval, Esq., collect, at (617) 357-9300.

The undersigned hereby declares that he is an Assistant Vice President of The First National Bank of Boston, and that he has knowledge of the matters set forth in the documents enclosed herewith.

Very truly yours,



James F. Notman, Jr.  
Assistant Vice President

Enclosures

## ASSIGNMENT AGREEMENT

WHEREAS, States Marine Corporation ("States Marine") has, either directly or through its States Rail Services division, under or in connection with the States Rail Services Covered Hopper Car Management Program, 1978-1983 (the "Program"), entered into the following contracts: (1) a Management Agreement with each participant in the Program (except itself); (2) a Subcontractor Agreement with GWI Rail Management Corp. ("GWIRM"); (3) two separate GWRR Agreements with Genesee and Wyoming Railroad Company "GWRR"); (4) a Shurtleff Lease with W. H. Shurtleff Co.; (5) a Fiscal Agency Agreement with The First National Bank of Boston (the "Bank") and each participant (except GWI Leasing Corp. ("GWILC")) that has financed its purchase of railcars through a loan from the Bank; (6) an Agreement and Consent to Assignment with the Bank and GWILC; and (7) a Collection Agency Agreement with the Bank and GWRR (the contracts listed in (1)-(7) above being hereinafter collectively called the "Contracts"); and

WHEREAS, States Marine and BRAE Corporation ("BRAE") have agreed, subject to the consents contained at the foot hereof, that States Marine will assign to BRAE its rights and obligations as manager and fiscal agent under and in connection with the Program;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, it is hereby agreed as follows:

1. States Marine hereby sells, transfers, conveys, assigns and delivers to BRAE all of the Contracts and all of States Marine's rights, title and interest, as agent and in its individual capacity (except as railcar owner), in, to and under the Contracts from this day forward, with the exception of Section 5 of the Fiscal Agency Agreements.

2. BRAE hereby accepts the assignment contained in Paragraph 1 above and covenants with States Marine to assume and faithfully perform and discharge all the terms, conditions, duties, obligations and responsibilities to be performed and discharged by States Marine as agent or in its individual capacity (except as railcar owner) under the Contracts from this day forward, with the exception of Section 5 of the Fiscal Agency Agreements; it being understood by the parties hereto that BRAE shall have no liability for the performance prior to the date hereof by States Marine under the Contracts.



3. States Marine and BRAE hereby agree to indemnify and hold harmless GWIRM, GWRR and the Bank and each of them from and against any and all claims, actions, judgments, settlements, damages, expenses (including reasonable attorneys' fees), losses or liabilities incurred by or asserted against GWIRM, GWRR and the Bank arising out of or in connection with the assignment of duties and obligations by States Marine hereunder.

4. It is expressly agreed and understood that as between States Marine and GWIRM, between States Marine and GWRR, between States Marine and the Bank and between States Marine and each of the participants in the Program, as such relationships appear in each of the several Contracts, that this assignment shall not constitute a novation of such Contracts but only a subcontracting of States Marine's rights and duties as agent or in its individual capacity (except as railcar owner) under such Contracts and that States Marine will at all times remain responsible, as assignor, to GWIRM, GWRR and the Bank for the due, prompt and punctual performance of its obligations thereunder.

5. This Assignment Agreement shall be governed by and construed under the laws of the State of New York.

IN WITNESS WHEREOF, States Marine and BRAE have caused this Assignment Agreement to be duly executed as of this 6th day of August, 1979.

STATES MARINE CORPORATION

By: [Signature]  
Secretary

BRAE CORPORATION

By: [Signature]

We each hereby consent to this Assignment Agreement.

GWI RAILCAR MANAGEMENT CORP.

By: [Signature]

GENESEE AND WYOMING RAILROAD COMPANY

By: [Signature]

THE FIRST NATIONAL BANK OF BOSTON

By: [Signature]  
ASSISTANT VICE PRESIDENT

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

On this 30<sup>th</sup> day of JULY, 1979, before me personally appeared WILLIAM A. CRAIG JR., to me personally known, who being by me duly sworn, says that he is the Secretary of States Marine Corporation and that the foregoing instrument was executed on behalf of States Marine Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of States Marine Corporation.

Rita Eileen Breslin  
Notary Public

My commission expires:

[Notarial Seal]

RITA EILEEN BRESLIN  
Notary Public, State of New York  
No. 24-5442310  
Qual. in Kings Co.-Cert. Filed in N.Y. Co.  
Commission Expires March 30, 1980

STATE OF California )  
COUNTY OF San Francisco ) ss.:

On this 6<sup>th</sup> day of August, 1979, before me personally appeared Donald R. Gleason, to me personally known, who being by me duly sworn, says that he is the Vice President, Operations of BRAE Corporation and that the foregoing instrument was executed on behalf of BRAE Corporation by authority of its Board of Directors or the Executive Committee, and he acknowledged that the execution of the foregoing instrument was the free act and deed of BRAE Corporation.

Mirella R. Abbo  
Notary Public

My commission expires:

[Notarial Seal]



2/25/83